

Remarks:

Claims 4, 5, and 7-12 remain for consideration in this application with claims 4, 7, and 11 being in independent format. In view of the claims as they now stand, together with remarks hereunder, the rejections of the Office Action of September 25, 2002 must be traversed.

The present invention provides an improved feeding tube which allows an installer to quickly ascertain whether the tube is properly placed within a patient's esophagus. Generally speaking, the tube comprises an elongated tube presenting a distal end adapted for insertion into a patient and a proximal portion designed to remain outside the patient, a fixture operably coupled with the proximal portion, and one or more intermediate coupling members attached to the fixture. The coupling members are adapted such that they permit the attachment of a CO<sub>2</sub> detecting machine to the tube, and thereby the presence of CO<sub>2</sub> adjacent the distal end of the tube may be detected when the tube is inserted into a patient. Using the present invention reduces the potential of causing damage by unintentionally passing the feeding tube into the respiratory tract.

In the Action, the specification was objected to for using reference character 14 to designate the proximal and distal end on page 3. This typographical error has been corrected in the specification by correctly noting that the proximal end is reference numeral 18. Accordingly, applicant asserts that this rejection has been overcome.

Claim 7 was objected to for having an improperly recited format. Applicant has amended the preamble to clearly show that the invention claimed is a combination of a CO<sub>2</sub> detecting machine and a feeding tube. Accordingly, applicant asserts that this objection has been overcome.

Claim 12 was rejected under 35 U.S.C. 112, first paragraph for lack of antecedent basis. This claim has been amended as suggested by the Examiner. Accordingly, this rejection has been overcome.

Claims 4-6 and 11 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,071,405 to Piontek et al., (Piontek) and claims 4-5, 11, and 12 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,874,365 to Frederick et al., (Frederick). Claims 4 and 11 have been amended to include the limitation of former claim 6 such that the claimed invention must also have at least one intermediate coupling member for attaching the tube to a CO<sub>2</sub> detecting machine. Because Frederick did not include a rejection over these limitations, applicant asserts that the rejection based on Frederick has been overcome. With respect to the rejection based on Piontek, applicants assert that Piontek does not disclose, teach or suggest any intermediate coupling members attached to the fixture. The y-port (22) is merely a component of the port housing 18. Thus, Piontek does not disclose or suggest a tube having a fixture and at least one intermediate coupling members, as required by claims 4 and 11. Without an intermediate coupling member, Piontek would not be adapted for connection to a CO<sub>2</sub> detecting machine. Accordingly, applicant asserts that these rejections have been overcome.

Claims 7-10 were rejected under 35 U.S.C. 103(a) as being obvious over Piontek in view of U.S. Patent No. 6,258,046 to Kimball (Kimball). To begin, applicant notes that Kimball is not prior art as this patent issued over 7 months after the present application was filed. However, even if Kimball was prior art, its combination with Piontek in no way obviates claims 7-10. This is because Kimball requires a blood flow sensor 12 at the distal end of the tube. Optionally, this blood flow

sensor can be used to measure  $\text{PCO}_2$  which is the partial pressure of  $\text{CO}_2$  in a tissue. The present claims require a  $\text{CO}_2$  detecting machine coupled with the proximal end of the tube, not at the distal end of the tube which is placed inside of a patient's esophagus. There is no disclosure or suggestion of having a  $\text{CO}_2$  detecting machine at the proximal end nor is there any teaching or suggestion of removing the blood flow sensor from the distal end of the tube in Kimball and if the sensor was removed, Kimball could not operate as intended. Of course, the teaching or suggestion must come from the prior art and not applicant's disclosure and the references cannot be modified in a way that destroys their intended function. Moreover, obvious to try is not the standard for obviousness. Accordingly, the combination of Piontek and Kimball cannot be said to obviate the present invention and applicants respectfully request that this rejection be withdrawn.

Applicants note that Kimball is related as the fifth continuation-in-part of application No. 08/498,932 which matured into U.S. Patent No. 5,579,763 (the '763 patent). Applicant therefore is submitting the '763 patent in an IDS which accompanies this response. As with Kimball, there is no teaching or suggestion of a  $\text{CO}_2$  detecting machine at the proximal end of the tube. Accordingly, it cannot be said that the '763 patent obviates the present invention.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached pages are captioned "Version with marking to show changes made."

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited.

Respectfully submitted,

By 

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**"Version with marking to show changes made."**

**In the Specification:**

Please delete the paragraph which begins at page 3, line 33 and ends at page 4, line 9 and substitute the following paragraph therein:

In more detail, the tube 10 is for the most part conventional, and includes an elongated, flexible, synthetic resin tubular body 22 having a conventional proximal end 18 known to those skilled in the art. The tube 10 is modified, however, by provision of an attachment fixture 26 at proximal end 18. Referring to Fig. 3, it will be observed that the fixture 26 is in the form of a somewhat Y-shaped tubular member 28 presenting a first leg 30 and an obliquely oriented leg 32. The leg 30 receives the tip of tubular body 22 as shown, whereby the leg 30 in effect forms a continuation of the tubular body 22. In this regard, it will also be seen that a guide wire 34 extends along the length of tube 22. This guide wire is retained in place by an endmost tubular mount 36 which is secured to the end of leg 30 remote from tube 22. The overall fixture further has a pair of pigtail stoppers 38 and 40 respectively secured to the legs 30, 32 and including a conical stopper projection 42, 44 designed to fit within the ends of the legs 30, 32 as will be described.

Claims:

Please cancel claims 6, 13-14.

Please amend the following claims:

4. (Amended) A patient feeding tube comprising:

an elongated tube presenting a distal end adapted for insertion into a patient and a proximal portion designed to remain outside the patient; [and]

a fixture operably coupled with said proximal portion; and

at least one intermediate coupling member attached to said fixture, said coupling member adapted [in order] to permit attachment of a CO<sub>2</sub> detecting machine to the tube so that the presence of CO<sub>2</sub> adjacent said distal end may be detected when the tube is inserted into a patient.

7. (Amended) [The] A feeding tube and CO<sub>2</sub> detecting machine combination comprising:

an elongated patient feeding tube presenting a distal end adapted for insertion into a patient and a proximal portion designed to remain outside the patient; and

a CO<sub>2</sub> detecting machine operably coupled with said proximal portion of said tube so that the presence of CO<sub>2</sub> adjacent said distal end may be detected when the tube is inserted into a patient.

11. (Amended) A fixture for connection to the proximal end of a feeding tube, said fixture comprising a bifurcated body presenting first and second tubular legs, said first leg having a connection end adapted for attachment to said proximal end to form a continuation thereof, said second leg in communication with the first leg and including at least one intermediate coupling member adapted for connection with a CO<sub>2</sub> detecting machine.

12. (Amended) The fixture of claim 11, including a guide wire extending through said first leg and feeding tube, there being a guide wire mount removably secured to [the] an end of said first leg remote from said connection end.

Please add the following new claim:

15. The feeding tube of claim 4, said fixture and said intermediate coupling member being removably secured to one another.